SPEECH

OF

MR. J. COLLAMER, OF VERMONT,

DELIVERED IN THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

ON

THE CONSTITUTIONAL VALIDITY OF THE ACT OF CONGRESS

REQUIRING THE

ELECTION OF REPRESENTATIVES TO BE BY DISTRICTS,

FEBRUARY 8, 1844.

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SPEECH.

The following resolution, reported by the Committee of Elections, being under consideration, to wit:

Resolved, That the second section of "An act for the apportionment of Representatives among the several States according to the sixth census," approved June 25, 1842, is not a law, made in pursuance of the Constitution of the United States, and valid and binding upon the States:

Mr. COLLAMER remarked—

Mr. SPEAKER: In June, 1842, in pursuance of the Constitution, Congress passed an act apportioning the Representatives among the States according to the sixth census, and in the second section provided that they should be chosen by districts. That passed both Houses of Congress, and was approved by the President. All the States have conformed to the first section of that law, but four have disregarded its second section as *unconstitutional*, and this House is now called on to sustain those States in their course.

This House is, by the Constitution, to "judge of the election, returns, and qualification of its own members;" but that does not authorize it to overrule or disregard the Constitution, or the law, made in pursuance thereof, defining such qualification. The *power* and *duty* of this House, in judging of the election and qualification of its members, is the same power and duty as that of a court in the decision of a cause; that is, to be guided and governed by the law, not to overturn or disregard it.

This is probably the first time, in our history, when a single branch of the Legislature has been called on to pronounce a law, which has received the sanction of all the departments of the law-making power, including this branch, as unconsti-

tutional and inoperative. Such a question may have arisen before the Executive, but more frequently before the Judiciary; but that this power should be exercised by one branch of the Legislature, and that, too, in a case where their decision is final and conclusive, is new and momentous. I mention this, not because I consider this House has not the power to treat an unconstitutional act as void, but that, in the delicate business of so doing, we should proceed with the utmost caution, and claim no *infallibility*, but in a case which is clear, past all reasonable doubt. We should have even a greater degree of certainty, if possible, than the Supreme Court require, that we may stand in no ambiguous position before the people. It should be remembered that this House is subject to political changes, and it is doubtful policy to make a decision now, on party grounds, which may induce a mode of proceeding in the several States, which will leave their future elections in doubt and danger.

The several States of this Union are indeed sovereign States, within the proper sphere of their jurisdiction; but in the relation they hold to the General Government, and in all that concerns the jurisdiction of this General Government, the States are subordinate; their powers, rights, and duties, being limited and controlled by the provisions of the Constitution. The States do not, from the mere fact of being *sovereign States*, have any right to choose Representatives to this Congress, any more than to send members to the Parliament of Great Britain, or the Chamber of Deputies in France. Texas, Mexico, are *sovereign States*, but that gives them no right of representation here. The only right to elect members to either House of Congress, by the people of any State, is what is given by the Constitution, and it must be exercised under the limitation that prescribes.

Much is constantly said about *rights*, *sovereign rights*. It might be well, occasionally, to recollect that every right implies a correlative *duty*; and all who claim their *rights* should perform their *duties*. The rights of the people of the States

to elect Representatives to Congress, and the duties to be regarded in the making such election, must be all determined by the Constitution.

The Representatives having been apportioned among the States by Congress agreeably to the Constitution, we come now to look for the mode of their election. The provision of the Constitution on this subject is as follows: "The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the *places* of choosing Senators." Something has been said in relation to the terms *shall* and *may*, in this provision of the Constitution, as if *shall* was used to confer more power on the State Legislature than *may* conferred on Congress. If the *occasion* on which this was drawn is considered, it will fully explain the use of those terms. The Convention was forming the Constitution; it was providing for the creation of a Congress of new model. The Convention could not, in the Constitution, provide all the *particulars* for a first election, and there was no Congress to do it until one was first chosen. The only possible mode, therefore, was to *direct* the States first to make the regulations, so that a Congress could be elected, and then to subject these regulations to the direction and supervision of Congress for all after time, by the grant of the subsequent power to them. To test this matter, and ascertain whether such was the use of these terms, let us transpose these words, and then the sentence would have run thus: The time, place, and manner of holding elections *may* be prescribed in each State by the Legislature thereof, but Congress *shall* at any time, by law, make or alter such regulations. Is it not apparent that such a sentence would be utterly inconsistent with what must then have been desired? It would have made it the *duty* of nobody to provide for the first election, and made it imperative on Congress to alter or make regulations, even if the States had made such as were entirely satisfactory.

It has been suggested that several States—that is, seven—proposed that the Constitution should be so altered that Congress should only exercise this power when a State entirely neglected to make the provisions. It is true such amendments were proposed, and were not adopted; and that clearly shows two things: first, that it was then distinctly understood that the Constitution gave the power to Congress to interfere with the mode of elections, even where the States had made regulations on the subject; and, second, that it was thought advisable to retain that power in Congress; and, therefore, the proposed amendments were rejected.

What, then, is the power of Congress over this matter? I answer, it is precisely the same as that of the States. The power to prescribe the regulations by the one, and the power to *make* and *alter* such regulations by the other, have the same latitude and the same limitation; but, by the very terms of the proposition, the power of Congress is ultimate and paramount. This clause of the Constitution must receive a practical construction, and not be rendered preposterous and unmeaning by refinements and distinctions incapable of practical application. The substance of the provision is, that the States shall regulate the *mode* of the election, subject to the supervision and control of Congress. As far as Congress thinks proper to make regulations, its authority is paramount and binding on all, and the States are bound to complete the regulations, consistently with those made by Congress. The *times*, *places*, and *manner* of holding elections, are but the elements—the *ingredients* in the composition of *regulations*. They, together, mean the *mode* of election, and are intended to mean the whole, including all things that make it. It is utterly impossible, practically, to separate these elements, and regulate one, without in some measure directing as to the other. They are like the *form*, *color*, and *material* of a thing—neither can exist alone.

It is now very fully conceded, both by the speakers and the report of the committee, that Congress possesses the power

to make the regulations as to the mode of the election in all particulars, provided that such regulations are so entire as to require no action by the State Legislature. The majority report goes so far as to allow that Congress might make regulations either as to *time, place,* or *manner,* but its regulations must be perfect and complete on that subject. It is difficult to see how this concession and these distinctions can be made, consistently with the principle on which the report is understood to go—that is, that Congress can do nothing which requires legislation by the State, or which gives direction to such legislation. But how can Congress settle the *time* of election, without requiring all the State Legislatures to make laws to direct the elections, and regulate the duties of the officers who attend them to conduct *accordingly?* Or, suppose that Congress should regulate the *place* or *places* of election—say to be at each court-house, town-house, and parish church—would not all the laws of States require to be altered accordingly? It is utterly impracticable to make any such distinction, and preserve the principle.

All this is, however, of little importance. The great point still remains, and it is this: It is insisted that Congress can never, constitutionally, legislate on any subject in such a manner as to require action by a State Legislature; that all acts of Congress must operate on the people *propria vigore,* by their own force, and not through State legislation; and therefore it can never be the duty of a State Legislature to regard or perfect any such measure. This is laid down as a principle in our Government, founded on the reason that State Legislatures are not the subjects or agents of Congress, and it is insisted that such has been the uniform practice in our Government. This brings the question to a very narrow point, and, in considering it, I will state some general principles, which, if sustained, will settle it.

When a power exists in the General Government, and the same exists in the State Government, each may exercise the same, for its own purposes. For instance: Congress may

raise a direct tax, and so may a State ; but, in such case, each must be for its own use, and each must act independent of the other. If a power is granted to Congress, that does not deprive the State of the exercise of that power, unless forbidden by the Constitution ; and the exercise of the power by Congress only suspends the power of the State to do any act inconsistent with what Congress has done.—(Sturgis *vs.* Crowninshield, 4 Wheaton, 122.) Such is the case of bankrupt laws, put in the majority report.—(12 Wheaton, 213.)

There is another entire class of cases in the Constitution. I speak of that class where there is granted a power to the States, to be exercised under the *direction*, *supervision*, or *control* of Congress. There are several such grants of power in the Constitution, in various forms of expression. It has been correctly decided by the Supreme Court that a State cannot obtain legislative power from Congress.—(9 Wheaton 207.) But, in relation to this class of cases, the State derives its power from the Constitution ; but the authority of Congress is paramount, and, so far as it goes, is imperative ; and, in the exercise of this power, Congress has often and early, both impliedly and directly and explicitly, required legislative action by the State Legislatures, and without which the action of Congress would have been incomplete and inoperative in its purpose.

All power exercised by a State Legislature, for the State, as a sovereign State, is exclusively derived from the State Constitution. If it comes from any other quarter, it is not a power given by the State, and in its exercise the State Legislature is not the agent of the State, but the agent of those who granted the power. In the exercise of all powers granted to a Legislature, in a State Constitution, it is sovereign, and cannot be guided, controlled, checked, or directed, by Congress, unless some limitation arises from the United States Constitution.

So, too, the powers granted by the United States Constitution to Congress, where nothing is said or clearly implied about State Legislatures, are to be exercised by Congress ; and State

Legislatures cannot direct Congress in such action, nor can Congress make the State Legislatures their agent, either in whole or in part, to perform such service. *Hence,* it has been holden that a State cannot derive power of legislation from Congress. Hence, Congress cannot make agents of State officers, or create any duty which they would be bound to discharge, as they are not amenable to Congress.

But when a power is, *by the Constitution of the United States,* conferred on a State Legislature, subject to the action of Congress, there the State Legislature does not act as the agent and Legislature of its State, deriving *from* and exercising its power *for* the State under their Constitution, but as the agent of the United States; and, by the very terms of the grant, it becomes subject to the supervision and control of Congress, and to which control it should cheerfully submit.

Now, look through all the State Constitutions in the Union, and from which solely the Legislatures derive their sovereign power, and you will look in vain for any power to make any law regulating the appointing Representatives to Congress, any more than to appoint foreign ministers. Such a power, then, they do not possess as the Legislature of a *sovereign State.* It is not derived from the State, but from the United States Constitution, and by that to be exercised under the direction and control of Congress.

Let us now inquire, what has been the action of the respective Governments in relation to this class of cases. In the enumeration of the powers of Congress, the Constitution says that Congress shall have power "to provide for organizing, arming, and disciplining the militia, and governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress." The militia could not be trained and officered unless organized and armed, and therefore the whole provision, taken together, is, in substance, that the militia is under the control of the State,

subject to the paramount direction of Congress, except as t its government, then only when in United States service. I relation to *arming* the militia, Congress in 1808 passed an ac entitled "An act making provision for arming and equippin the whole body of the militia of the United States." Th first section of that act provides "that the *annual* sum of tw hundred thousand dollars be, and hereby is, appropriated fo the purpose of providing arms and military equipments fo the whole body of the militia of the United States, either b purchase or manufacture, by and on account of the Unite States." Thus far, no provision existed by which a singl musket would ever reach the militia; and did Congress, b law, provide any method by which this could be done withou the aid of State legislation, or any law of their own which, *i itself*, would effect it? They might so have done by appoint ing agents for, and directed a mode of distribution; but the proceeded otherwise. By the third section of that act it i provided "that all the arms procured in virtue of this act shal be transmitted to the several States composing this Union and the Territories thereof, to each State and Territory, respect ively, in proportion to the number of the effective militia in each State and Territory, and by *each State and Territory to b distributed to the militia, under such rules and regulation as shall be by law prescribed* BY THE LEGISLATURE OF EACH STATE AND TERRITORY." Here, then, was a most clear, expli cit, and direct expression of the will of Congress, *mandatory* on the States, to perfect, and by legislation to carry out the purpose of Congress, in relation to a subject which the Constitution had intrusted to the two. Was this treated as a usurpation, and the last section *void*, and the whole but an abortion? No, sir; the States all, with great propriety, submitted, and performed their duty, and all proceeded in harmony.

Under this same clause of the Constitution, as to the militia, on the subject of *organization*, Congress took early action. In 1792 Congress passed an act entitled "An act more effectu-

r to provide for the national defence, by establishing a uni-
n militia throughout the United States." Now, sir, did
y proceed to lay off the United States into divisions, bri-
les, regiments, and companies, or describe any territory to
ıpose their beats? Did they make a law which, by its own
:e, without the action of State Legislatures, would produce
ɔrganization, as they might have done? No, sir; they pur-
d an entirely different course, and that, too, by a Congress in
possession of the knowledge of all the limitations of their new-
reated powers. In the first two sections of that act they define
ıt citizens shall compose the militia, and who shall be the
mpt, how the militia shall be armed and enrolled. In the
d section it is enacted and *commanded* "that, within one
r after the passing of this act, the militia of the respective
:es *shall be arranged into divisions, brigades, regiments,*
companies, AS THE LEGISLATURE OF EACH STATE SHALL
ECT; *and each division, brigade, and regiment, shall be*
ıbered at the formation thereof," and then going on giving
licit directions for the Legislature to follow. How can the
glish language frame a more clear and definitive expression
ıandatory language from one body to another, to proceed
erfect and carry out its will; and that, too, by legislation,
ıout which the object would utterly fail? And how was
treated in those virtuous and palmy days of our Republic?
the States, or any one of them, fly in the face of Congress,
contemn their direction, and treat their law as a usurpa-
or an abortion? Did they talk about their sovereign
ıts, and tell Congress to perform their own drudgery? No,
no. They better understood the respective *rights* of all,
possessed at the same time the virtue of obedience to *du-*
No madness of party had then been engendered, which
ıld have given countenance to insubordination to any thing,
ely because that party disliked it. No, sir; all the State
islatures proceeded to act as directed, and all proceeded in
nony.

I call attention now to another one of that class of ca
where a power is granted to the State Legislatures by
United States Constitution, subject to Congressional cont
The Constitution provides that each State shall appoint *el*
ors of President and Vice President, "in such manner as
Legislature shall direct;" but as to the *time* of choosing
electors, and time of their voting, the Legislatures are subj
to the direction of Congress, as the Constitution provides t
"the Congress *may* determine the *time* of choosing the el
ors, and the day on which they shall give their votes, wh
day shall be the same throughout the United States." No
according to the argument of the majority of the committ
Congress, having power over the *time* of *electing* the elect
and the time of their voting, must, if they exercise such po
on either of those times, make an entire exercise, and fix s
of said respective times, on which they act with *certainty*,
not leave any thing for the action of the State Legislature to
on that point. How did Congress act? In 1792 they pas
an act entitled "An act relative to the election of President
Vice President of the United States, and declaring the off
who shall act as President in case of vacancy in both the
ces of President and Vice President." In the first section
that act it is provided that "electors shall be appointed, in e
State, for the election of President and Vice President of
United States, *within thirty-four days preceding* the first W
nesday in December," &c. Now, could any citizen in
United States tell, *by this act*, what day he was to vote
electors? Did it contain, by its own force, power to act on
citizens? Most clearly not. It was therefore nothing m
or less than a direction to the State Legislatures to proceed
legislate as to the day of choosing electors, and limiting to th
the time beyond which they should not go. Was this e
considered as unauthorized, inoperative, or void? No,
every State in the Union has proceeded by its direction,
legislated accordingly.

Many, very many, other cases could be brought forw

ere Congress have expressly or impliedly given direction to States as to the manner in which they were to exercise se powers which they hold, under the Constitution, subject Congressional control; and in all such cases the States have arded such direction, and legislated accordingly. It is a ver which has been long exercised in this manner, and er disputed until the present occasion.

My habits of life have forcibly led me to value a Govern-nt of law, and the virtue of subordination and *obedience*, as ll as the value of rights. Rights can have no existence but *obedience to duties*. I have, in an humble manner, so long nistered at the altar of the law, that I cannot but still hope see it preserved from desecration, and especially in this ll. I cannot but yet hope this House will not give counte-nce or encouragement to the spirit of insubordination, but l require submission to the laws as the only condition on ich either States or individuals can be entitled to claim their nts.